

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
MEDFORD DIVISION

**ELRIC V. SHELBY,**

Petitioner,

v.

**STATE OF OREGON,**

Respondent.

No. 1:16-cv-01859-CL

OPINION AND ORDER

**MOSMAN, J.,**

On December 5, 2016, Judge Mark D. Clarke issued his Findings and Recommendation (“F&R”) [6], recommending that I DENY Mr. Shelby’s Petition [2] based on a lack of jurisdiction and *Younger v. Harris* abstention. Defendant did not object to the F&R but filed a Motion to Dismiss Without Prejudice and/or Appoint Counsel to Respond to the F&R [8].

**DISCUSSION**

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a *de novo* determination regarding those portions of the report or specified findings or

recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, *de novo* or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Clarke's recommendation and ADOPT the F&R [6] as my own opinion. Mr. Shelby's Petition [2] is DISMISSED without prejudice.

IT IS SO ORDERED.

DATED this 2 day of February, 2017.

/s/ Michael W. Mosman

---

MICHAEL W. MOSMAN  
Chief United States District Judge